IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 151 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOSWAMI PARAGPURI RAMPURI & 4 - Appellant(s)
Versus
THE STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR PJ KANABAR for Appellant(s) : 1 - 5.
MR HL JANI, ADDL PUBLIC PROSECUTOR for Opponent(s) : 1,
MR SIKANDAR SAIYED for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/03/2007

ORAL JUDGMENT

1. **ADMIT.** Mr. H.L. Jani, learned Additional Public Prosecutor, waives service of process of admission for respondent No.1- State of Gujarat. Mr. Sikandar Saiyed, learned advocate, appears for respondent No.2-Parmabhai Karmanbhai Patel (Contractor)-

original complainant who was joined as respondent No.2, vide order dated 26.02.2007.

2. Present is the appeal wherein the appellants, five in number, original accused have challenged the conviction and sentence in Sessions Case No. 83 of 2005 by the learned Additional Sessions Judge, Fast Track Court No.1, Patan by judgment and order dated 10.01.2007.

Originally, the appellants-accused were charged with offence under Sections 307, 397, 452, 323, 324 and 504 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3. The case of the prosecution, in short, is that, on 15.07.2005, when complainant Parmabhai Karmanbhai Patel alongwith his brother Ramabhai and driver Merambhai Rajabhai Thakor were in their office named as 'Arbuda Auto Consultancy', situated near Radhanpur Highway Circle, near Kathiawadi Hotel, they were assaulted by the appellants-accused. Accused No.1- Paragpuri Rampuri Goswami was armed with a stick, accused No.2-Sompuri Rampuri Goswami was armed with an iron-tommy, accused No.3-Khodpuri Trikampuri Goswami was armed with a stick, accused No.4-Anand alias Tino Paragpuri Goswami was also armed with a stick and accused No.5-Navinpuri Rampuri Goswami was armed with a knife. The F.I.R. was registered as C.R. No.I-103 of 2005 at Radhanpur Police Station. After the investigation, chargesheet was filed. As

offences involved were triable by the court of Sessions, the learned Judicial Magistrate First Class, Radhanpur, by order dated 10.11.2005, committed the case to the Sessions and it was registered as Sessions Case No. 83 of 2005.

4. The learned Additional Sessions Judge was pleased to frame the charge, vide Exh.8. The same was read-over to the accused. As they denied to have committed any offence, trial proceeded.

5. The prosecution relied upon the following oral evidence:

P.W. Nos.	**Name of the witnesses**	**Exhibit Nos.**
01	Dr.Pareshbhai Kanaiyalal Kadiya (Medical Officer) (who has investigated the injured)	21
02	Parmabhai Karmandas Patel (Complainant)	25
03	Kanjibhai Parbatbhai (Panch)	27
04	Kunvarabhai Raghunathbhai (Panch)	31
05	Dashrathbhai Khodabhai (Panch)	35
06	Bhavaji Ghemarji (Panch)	37
07	Ramabhai Karmanbhai (injured witness)	45
08	Merambhai Rajabhai Thakor (injured complainant)	46
09	Dr. Bhavesh Manubhai Nayak (Medical Officer, Mehsana) (who investigated the injured)	47
10	Dhulabhai Ranchhodbhai Solanki (PSO, Radhanpur Police Station)	55

P.W. Nos.	Name of the witnesses	Exhibit Nos.
11	Jaysinh Abhesinh Chauhan (PSI, Radhanpur Police Station) (Investigating officer)	57

The prosecution also relied upon the following documentary evidence:

Srl.Nos.	Description of the documents.	Exhibit Nos.
01	Medical certificate of witness Merambhai and Ramabhai, Radhanpur	22
02	Medical certificate of Ramabhai Kamabhai, Radhanpur	23
03	Medical certificate of complainant Parmabhai Karmanbhai.	24
04	Complaint of Patel Parmabhai Karmanbhai	26
05	Panchnama of the scene of offence	28
06	Panchnama of the cloth worn by Merambhai and Ramabhai at the time of incident	32
07	Recovery panchnama of vehical being 709 E without X Turbo Ping	36
08	Panchnama of the cloth worn by Paragpuri Rampuri at the time of incident and panchnama of of production of weapons by Goswami Khodpuri Trikampuri, Anandpuri alias Tino Paragpuri and Navinpuri Rampuri	38
09	Transfer note of injured Merambhai Rajabhai Thakor	48
10	X-ray No. 3387 of injured Merambhai Rajabhai Thakor	49

Srl.Nos.	Description of the documents.	Exhibit Nos.
11	Medical certificate of witness Thakor Merambhai Ramabhai issued by Civil Hospital, Mehsana	50
12	Transfer Chit of injured witness Ramabhai Karmabhai	51
13	Two X-rays being Nos.3388-3389 of witness Ramabhai Karmabhai	52 & 53
14	Medical certificate of Ramabhai Karmanbhai issued by Civil Hospital, Mehsana	54
15	Report of serious offence	56
16	Application for adding sections 395, 324, 323, 504 of the I.P.C. by the PSI, Radhanpur to the JMFC.	58
17	Yadi sent by PSI to Executive Magistrate for preparing a map of place of offence	59
18	Dispatch note	60
19	Receipt of muddamal by FSL	61
20	Report of FSL, Ahmedabad annexed with the forwarding letter.	62
21	Serological report of FSL, Ahmedabad	63
22	Copy of notification of prohibition of arms of learned District Magistrate, Patan.	64

6. The learned Judge, after taking into consideration the evidence on record, was pleased to hold the accused guilty for offences under Section 452, 307, 323, 325, 504 read with Section 34 of the I.P.C. and Section 135 of the Bombay Police Act, but, awarded sentence for offence under Section 307 read

with Section 34 of the I.P.C. only. The learned Judge awarded four years' rigorous imprisonment, fine of Rs.5,000/- each and, in default, three months' simple imprisonment. The learned Additional Sessions Judge was pleased to order to give 'set off' to the accused and was pleased to order that, if the amount of fine is paid by the accused, an amount of Rs.3,000/- be paid to each of the injured alongwith the complainant.

7. Mr. Kanabar, learned advocate for the appellants, strenuously argued that this is not a case wherein the ingredients of Section 307 of the Indian Penal Code are fulfilled. He submitted that from the medical evidence, it is clear that there is no evidence to the effect that the injuries caused to the injured were sufficient to cause death in the natural course.

The learned advocate for the appellants submitted that the learned Additional Sessions Judge has committed an error when he recorded that, 'it is not necessary that there should be medical evidence to the effect that the injury caused was sufficient to cause death in natural course'. He submitted that the learned Judge has also committed an error when it is observed that, 'the medical evidence is corroborative piece of evidence and the knowledge and the intention on the part of the accused is important'.

The learned advocate submitted that the learned Judge has observed that the accused came in a Tata 709 vehicle with the dangerous weapons and attacked the place of business of the complainant. Not only that, they attacked 'Ramabhai Karmanbhai' by giving a blow with iron-tommy on the head and head is a vital part of the body. Not only that, there is a fracture of ulna caused to 'Merambhai Thakor' (driver).

The learned advocate submitted that, though it was the case of the prosecution that the accused have committed offence under Sections 395, 397, 452 and 504 of the I.P.C., the appellants are acquitted of all these charges and they are convicted for an offence under Section 307 read with Section 34 of the I.P.C. only. The learned advocate submitted that the accused could have been convicted for offence under Section(s) 323-324 of the I.P.C. only.

The learned advocate submitted that, even in the complaint, it is stated that the complainant and the accused had a business rivalry as they were supplying vehicles to 'Banas Dairy' at Radhanpur. In the background of this business rivalry, they had exchange of hot words, a day prior to the incident, which cannot be lost sight of. The learned advocate submitted that if five persons armed with the alleged dangerous weapons, assault the victim would not have been spared with number and type of injuries sustained by them.

8. At this juncture, learned advocate Mr. Sikandar Saiyed submitted that, in response to the notice, he has kept complainant 'Parmabhai Karmanbhai Patel' present. The learned advocate placed on record affidavits filed by 'Parmabhai Karmanbhai Patel', 'Ramabhai Karmanbhai Patel' and 'Merambhai Rajabhai Thakor' alongwith a compromise, which is signed by Patel Parmabhai Karmanbhai and one Goswami Govindpuri Narotampuri as a witness. He submitted that, after the incident, the complainant and the accused have been residing peacefully. They have no such incident or occasion though the accused were on bail during the trial.

9. Fact that the matter is compromised between the parties and taking into consideration the submissions made by the learned advocate for the appellants, the conviction is altered to conviction under Section 324 of the Indian Penal Code and, taking into consideration the fact of compromise arrived at between the parties, the sentence imposed is reduced to the period undergone.

The appeal is partly allowed. The appellants-original accused are ordered to be released forthwith if not required in any other offence.

(RAVI R. TRIPATHI, J.)

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